

1 ROSEMARIE T. RING (SBN 220769)  
2 rose.ring@mto.com  
3 MARI OVERBECK (SBN 261707)  
4 mari.overbeck@mto.com  
5 MUNGER, TOLLES & OLSON LLP  
6 560 Mission Street  
7 Twenty-Seventh Floor  
8 San Francisco, California 94105-2907  
9 Telephone: (415) 512-4000  
10 Facsimile: (415) 512-4077  
11 MARGARET C. CROSBY (SBN 56812)  
12 mcrossby@aclunc.org  
13 ELIZABETH O. GILL (SBN 218311)  
14 egill@aclunc.org  
15 AMERICAN CIVIL LIBERTIES UNION  
16 FOUNDATION OF NORTHERN  
17 CALIFORNIA, INC.  
18 39 Drumm Street  
19 San Francisco, CA 94111  
20 Telephone: (415) 621-2493  
21 Facsimile: (415) 255-8437  
22 Attorneys for Plaintiffs  
23  
24

25 STUART F. DELERY  
26 Principal Deputy Assistant Attorney General  
27 MELINDA HAAG  
28 United States Attorney  
ALEX TSE  
Chief, Civil Division  
ANTHONY J. COPPOLINO  
Deputy Branch Director  
CAROLINE LEWIS WOLVERTON  
caroline.lewis-wolverton@usdoj.gov  
District of Columbia Bar No. 496433  
Senior Counsel  
Civil Division, Federal Programs Branch  
U.S. Department of Justice  
P.O. Box 883  
Washington, D.C. 20044  
Telephone: (202) 514-0265  
Facsimile: (202) 616-8470

Attorneys for Defendant CHUCK HAGEL

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17  
18 MARY JENNINGS HEGAR, JENNIFER  
19 HUNT, ALEXANDRA ZOE BEDELL,  
20 COLLEEN FARRELL, AND SERVICE  
WOMEN'S ACTION NETWORK,  
21 Plaintiffs,  
22 vs.  
23 CHUCK HAGEL, Secretary of Defense,  
24 Defendant.

25 Case No. 12-CV-06005 EMC  
26 **REVISED STIPULATION AND  
[PROPOSED] ORDER SETTING  
BRIEFING SCHEDULE AND HEARING  
DATES AND CONTINUING INITIAL  
CASE STATUS CONFERENCE**  
27  
28 Judge: Hon. Edward M. Chen

**REVISED STIPULATION**

Plaintiffs Mary Jennings Hegar, Jennifer Hunt, Alexandra Zoe Bedell, Colleen Farrell, and Service Women's Action Network and Defendant Chuck Hagel, Secretary of Defense ("Secretary") (collectively, "the parties"), by and through their respective counsel, submit this revised stipulation setting forth a proposed plan and schedule for resolving a discovery dispute that has arisen between the parties in a way that will avoid expedited motion practice relating to current briefing schedules and hearings. It revises and supplants the stipulation and proposed order filed by the parties on January 9, 2014.

1. On November 27, 2012, Plaintiffs filed their Complaint for Declaratory and  
 2. Injunctive Relief challenging as unconstitutional the 1994 direct ground combat definition and  
 3. assignment rule, and the Court issued an Order Setting Initial Case Management Conference and  
 4. ADR Deadlines;

5. On January 24, 2013, the Secretary rescinded the 1994 direct ground combat  
 6. definition and assignment rule and directed the Military Services to submit plans to him by May  
 7. 15, 2013 for implementation of this policy change;

8. In light of the above, on January 29, 2013, the parties filed a stipulation with the  
 9. Court agreeing to meet and confer within three weeks of the May 15, 2013 deadline for the  
 10. Military Services' submission of their implementation plans, and to allow the Secretary thirty (30)  
 11. days after that meet and confer to respond to the Complaint;

12. On February 7, 2013, the parties filed a stipulation and proposed order with the  
 13. Court to continue the initial case management conference and ADR deadlines, and on February 8,  
 14. 2013, the Court entered an order resetting the initial case management conference for July 18,  
 15. 2013;

16. Consistent with the parties' agreement to meet and confer within three weeks of the  
 17. May 15, 2013 deadline for the Military Services' submission of their implementation plans, the  
 18. parties held a telephone conference on May 30, 2013. During the conference, undersigned counsel  
 19. for Defendant conveyed that the Military Services had submitted their implementation plans to the  
 20. Secretary and that the Department of Defense ("DoD") was treating the plans as pre-decisional

1 and deliberative. Undersigned counsel for Defendant further conveyed that, consistent with the  
 2 National Defense Authorization Act of 2013, section 526, H.R. 4310, (“DoD”) planned to report  
 3 to Congress in July 2013 on the feasibility of developing gender-neutral occupational standards for  
 4 military occupational specialties currently closed to women. Counsel for Defendant further stated  
 5 that DoD anticipated that the report would provide some information about the Services’  
 6 implementation plans.

7       6.      In light of the information provided by counsel for Defendant, on June 7, 2013, the  
 8 parties filed a stipulation with the Court agreeing to hold a further meet and confer by no later than  
 9 August 20, 2013 and to allow the Secretary thirty (30) days after that meet and confer to respond  
 10 to the Complaint.

11       7.      Also on June 7, 2013, the parties filed a stipulation and proposed order with the  
 12 Court to continue the initial case management conference and ADR deadlines, and on June 11,  
 13 2013, the Court entered an order resetting the initial case management conference for October 3,  
 14 2013.

15       8.      DoD made the implementation plans public on June 18, 2013, completed the  
 16 above-referenced report to Congress in July 2013 and submitted it to Congress on August 2, 2013.

17       9.      Consistent with the parties’ agreement to meet and confer no later than August 20,  
 18 2013, the parties held a telephone conference on that date. In the following weeks, the parties held  
 19 several more telephone conferences in which, among other things, the parties discussed the  
 20 implementation plans DoD had made publicly available, and Plaintiffs’ counsel sought  
 21 information regarding the date by which Defendant will announce whether certain positions,  
 22 specialties, units, and schools of interest to Plaintiffs will continue to be closed to women.  
 23 Plaintiffs’ counsel also informed Defendant that the Plaintiffs intended to file an Amended  
 24 Complaint.

25       10.     As required by the June 11, 2013 order, the parties held their Rule 26(f) conference  
 26 and discussed ADR options on August 30, 2013. In light of Plaintiffs’ intention to file an  
 27 Amended Complaint, the parties agreed that it would be most efficient for the Court and for the  
 28 parties to agree on a schedule for filing the Amended Complaint, responding to the Amended

1 Complaint by Answer or motion, briefing on any motion to be filed, and to request a continuance  
 2 of the initial case management conference and ADR deadlines.

3       11. On September 9, 2013, the Court provided notice to the parties that the initial case  
 4 management conference set for October 3, 2013 would be reset for October 8, 2013.

5       12. On September 13, 2013, the parties filed a stipulation and proposed order setting a  
 6 schedule for filing the Amended Complaint, responding to the Amended Complaint by Answer or  
 7 motion, briefing on any motion to be filed, and to request a continuance of the initial case  
 8 management conference, and on September 18, 2013, the Court entered an order setting the  
 9 following deadlines and resetting the initial case management conference for March 20, 2014:

10	11/5/2013	Last day to file Amended Complaint
11	11/15/2013	Last day to meet and confer regarding Amended Complaint
12	12/19/2013	Last day to respond to the Amended Complaint
13	1/31/2014	If response to Amended Complaint is a motion, last day to file opposition
14	2/14/2014	If response to Amended Complaint is a motion, last day to file reply
15	2/20/2014	Last day to: meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan; file ADR Certification signed by parties and counsel; file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference
16	3/13/2014	Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report, and file Case Management Statement per the Court's Standing Order re Contents of Joint Case Management Statement
17	3/20/2014	Initial Case Management Conference

18       13. On October 31, 2013, Plaintiffs filed an Amended Complaint (Dkt No. 18).

19       14. Consistent with the parties' agreement to meet and confer regarding the Amended  
 20 Complaint by November 15, 2013, the parties scheduled a telephone conference for November 14,  
 21 2013, which due to scheduling conflicts was held on November 18, 2013. Defendant informed  
 22 Plaintiffs that he intended to file a motion to dismiss the Amended Complaint. Plaintiffs informed  
 23 Defendant that the Plaintiffs intended to serve discovery.

1

2       15. On December 3, 2013, Plaintiffs served discovery on Defendant in the form  
3 of requests for production of documents with a response deadline January 6, 2014.

4       16. On December 19, 2013, Defendant filed a motion to dismiss the Amended  
5 Complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure  
6 12(b)(1), and a notice of motion requesting a March 14, 2014 hearing date.

7       17. On December 19, 2013, the parties held a telephone conference to discuss  
8 Plaintiffs' pending discovery requests. Defendant informed Plaintiffs that he intended to file a  
9 motion seeking a protective order staying all discovery in the case pending the Court's ruling on  
10 his Rule 12(b)(1) motion and sought Plaintiffs' agreement to set the hearing on that motion for the  
11 same date as the hearing on Defendant's motion to dismiss. Plaintiffs informed Defendant that  
12 they oppose a stay of discovery in the case and believe they are entitled to the discovery they are  
13 seeking, but requested time to review Defendant's motion to dismiss to consider whether the  
14 discovery could be narrowed to focus on issues relevant to opposing Defendant's motion to  
15 dismiss.

16       18. On December 30, 2013, having reviewed Defendant's motion to dismiss, Plaintiffs  
17 informed Defendant that they would agree to narrow some of the pending document requests and  
18 to serve interrogatories in lieu of others, but could not agree to set any motion Defendant might  
19 file seeking a protective order on the same schedule as Defendant's motion to dismiss because  
20 Plaintiffs contend they need, and are entitled to, the discovery they are seeking to oppose  
21 Defendant's motion to dismiss which raises factual issues challenging this Court's subject matter  
22 jurisdiction on ripeness grounds. Defendant agreed to respond to Plaintiffs' offer to narrow their  
23 discovery requests by January 6, 2014. Because the deadline for Defendant to either respond to  
24 Plaintiffs' pending discovery requests or obtain a protective order was also January 6, 2014,  
25 Plaintiffs agreed to a two-week extension of that deadline until January 20, 2014.

26       19. On January 6, 2014, Defendant informed Plaintiffs that he intends to seek a  
27 protective order staying all discovery in the case pending the Court's ruling on his Rule 12(b)(1)  
28 motion and that Defendant disagrees that Plaintiffs need or are entitled to discovery in order to

1 respond to Defendant's Rule 12(b)(1) motion. In light of the above, the parties have agreed to a  
 2 schedule allowing for resolution of Defendant's motion for protective order before Plaintiffs file  
 3 their opposition to Defendant's motion to dismiss, and to request a continuance of the initial case  
 4 management conference and ADR deadlines.

5       20. In light of the foregoing, the parties request that the Court supplement and continue  
 6 the scheduling dates established by the September 18, 2013 order as follows:

7              Last day to file motion for protective order:	1/21/14
8              Last day to file opposition to motion for protective order	2/4/14
9              Last day to file reply in support of motion for protective order	2/11/14
10             Hearing on motion for protective order	2/27/14

11 If the motion for protective order is granted, the following dates apply:

12             Last day to file opposition to motion to dismiss	4/14/14
13             Last day to file reply in support of motion to dismiss	4/28/14
14             Hearing on the motion to dismiss is re-noticed for	5/22/14
15             Last day to: meet and confer re initial disclosures, early settlement, ADR process election, and discovery plan; file ADR Certification signed by parties and counsel; file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference:	7/22/14
16             Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report, and file Case Management Statement per the Court's Standing Order re Contents of Joint Case Management Statement:	8/21/14
17             Initial Case Management Conference:	8/28/14

22 If the motion for protective order is denied, the following dates apply<sup>1</sup>:

23             Last day to file opposition to motion to dismiss	8/14/14
24             Last day to file reply in support of motion to dismiss	8/28/14

---

25       <sup>1</sup> Defendant observes that these dates are necessarily speculative because they are proposed in  
 26 advance of any ruling concerning the scope of discovery that might accompany a denial of the  
 27 motion for protective order. Defendant further reserves all rights to object to individual discovery  
 28 requests or to seek appropriate protective orders in the event that the court denies the motion for  
 protective order to be filed by January 21, 2014.

1 Hearing on the motion to dismiss is re-noticed for 9/18/14  
2 Last day to: meet and confer re initial disclosures, early settlement, ADR process election,  
3 and discovery plan; file ADR Certification signed by parties and counsel; file either  
4 Stipulation to ADR Process or Notice of Need for ADR Phone Conference: 11/18/14  
5 Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule  
6 26(f) Report, and file Case Management Statement per the Court's Standing Order re  
7 Contents of Joint Case Management Statement: 12/11/14  
8 Initial Case Management Conference: 12/18/14  
9 IT IS SO STIPULATED.

10 DATED: January 21, 2014 MUNGER, TOLLES & OLSON LLP

11 By: /s/  
12 ROSEMARIE T. RING

13 Attorneys for Plaintiffs

14 MARY JENNINGS HEGAR, JENNIFER  
15 HUNT, ALEXANDRA ZOE BEDELL,  
16 COLLEEN FARRELL, AND SERVICE  
WOMEN'S ACTION NETWORK

17 DATED: January 21, 2014 STUART F. DELERY  
18 Principal Deputy Assistant Attorney General  
MELINDA HAAG  
United States Attorney  
19 ALEX TSE  
Chief, Civil Division  
ANTHONY J. COPPOLINO  
20 Deputy Branch Director

21 /s/  
22 CAROLINE LEWIS WOLVERTON  
U.S. Department of Justice  
23 Attorneys for Defendant CHUCK HAGEL

1 Additional Counsel:

2 STEVEN M. PERRY (SBN 106154)  
3 MUNGER, TOLLES & OLSON LLP  
4 355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071-1560  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
Email: steven.perry@mto.com

LENORA M. LAPIDUS [pro hac vice]  
ARIELA MIGDAL [pro hac vice]  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
WOMEN'S RIGHTS PROJECT  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: (212) 549-2668  
Facsimile: (212) 549-2580  
Email: Llapidus@aclu.org  
Email: Amigdal@aclu.org

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                   **ATTESTATION PURSUANT TO GENERAL ORDER 45**

2                   I, Caroline Lewis Wolverton, am the ECF User whose identification and password are  
3 being used to file this REVISED STIPULATION AND [PROPOSED] ORDER SETTING  
4 BRIEFING SCHEDULE AND HEARING DATES AND CONTINUING INITIAL CASE  
5 STATUS CONFERENCE. In compliance with General Order 45.X.B, I hereby attest that all  
6 signatories have concurred in this filing.

7                   **[PROPOSED] ORDER**

8                   Pursuant to stipulation, it is SO ORDERED. The CMC is reset to 8/28/14 at 9:00 a.m.

9                   Dated: \_\_\_\_\_

10                  1/23/14



21  
22  
23  
24  
25  
26  
27  
28